

## Voir Dire

---

---

---

---

---

---

---

---

## Jury Selection Mindset




---

---

---

---

---

---

---

---

## Jury DE-selection Mindset

- Voir Dire is about finding that one juror who will screw up deliberations.
  - Split verdicts, lesser included, etc...
- The Defendant is guilty and we have the evidence to prove it.
  - We would not be in Court if we could not prove this case beyond a reasonable doubt.
  - Evidence is on our side, we need to find those jurors who won't let themselves listen to it.

---

---

---

---

---

---

---

---

### Jury DE-selection Mindset

- Understanding the Juror
  - They are ill-equipped to deal with the issues they will be presented... but yet have great power.
  - You as the prosecutor are intimidating.




---

---

---

---

---

---

---

---

### DE-selection time frame

- Start thinking about it as soon as you open your file.
  - \*or the very least when the case gets set for trial
- Theme based prosecution
  - 2-3 sentence statement of what the Defendant did wrong and why he deserves to be punished
  - Gives you a framework for questions and types of jurors you want (and more importantly... don't want)

---

---

---

---

---

---

---

---

### Preparing your Voir Dire

- Base questions should be prepared loooong before you walk into the Courtroom
  - Find yourself writing furiously during Court's Voir Dire?...




---

---

---

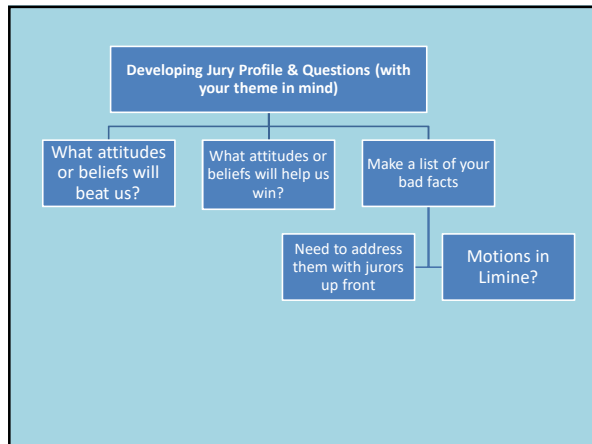
---

---

---

---

---




---

---

---

---

---

---

---

---

**Juror Profiles will always be case specific**

- Kennedy rape trial
- SJS pending rape trial



**SIX-PACK**  
You're doing it wrong!

---

---

---

---


---

---

---

---

**Supplemental Juror Questionnaires (SJQ's)**



- What are they?
- What types of cases need one?
  - Capital Cases
  - High Profile Cases
  - Extended Trials (mainly due to hardship issues)
- Process of getting a SJQ (*\*\*after approval from SSP of course!*)
  - Bring defense team prior to going to Court together
  - Educate Court on benefits of SJQ
    - APAAC has study indicating more likely to get honest answers
    - Gets rid of hardship issues up front
    - Avoid jurors parroting other jurors to get excused
- After receiving SJQ returns you can coordinate with defense for agreed upon strikes.
  - Make sure to file a pleading making a record of juror strikes and reasons behind strike (parties stipulate, for cause, hardship, etc...)

---

---

---

---

---

---

---

---

## Time to go to Court




---

---

---

---

---

---

---

---

## You Never get a 2<sup>nd</sup> Chance to Make a 1<sup>st</sup> Impression

- Wear a Suit
- Stand for Jurors
- Full reverence to the Court
- Same goes for your Officer / Detective




---

---

---

---

---

---

---

---

## Demeanor

- Do not take yourself too seriously
  - Remember the intimidation factor
  - OK to smile, laugh, allow humor
- But..... ALWAYS TAKE YOUR CASE SERIOUSLY
  - Never a “simple possession” case
  - Never compare to other crimes: “Its not like this is a murder case”

---

---

---

---

---

---

---

---

### 1. Introduction... time to start working the room

- Introduce yourself & why you are there
- Thank them for being there on behalf of everyone (including the Defendant)
  - Show appreciation for their service
  - Stock personal story works well here

---

---

---

---

---

---

---

---

### 2. Ice Breaker

- Embrace Your Burden



- Use this opportunity to ask a question that gets everyone involved from the outset.
  - “Raise your hand if you agree that the burden is on the State to prove it’s case”

---

---

---

---

---

---

---

---

### 3. Invite them to be Open

- Its OK to have biases that may
  - Personal example of a case that you yourself probably could not sit on
  - Tell them there may be other cases they may be better suited for
- Priming them to openly talk about attitudes that are detrimental to your case

---

---

---

---

---

---

---

---

#### 4. E.A.R. method

- **E**<sub>xperience</sub>
- **A**<sub>ttitude</sub>
- **R**<sub>ules of Thumb</sub>

---

---

---

---

---

---

---

---

#### Voir Dire is the time to use your ears & listen

Only opportunity you are going to  
have to hear the jurors before a  
verdict

Avoid urge to press your case or  
to indoctrinate




---

---

---

---

---

---

---

---

#### Experience

- Questions designed to draw out personal  
experience of the juror or family/friends
  - Questions based around your bad facts & juror  
profiles you do not want
- Always frame your questions looking for  
experiences negative to your case
  - Looking for the problem jurors
  - Doing otherwise will be painting targets for the  
defense
- Ask what that specific experience was

---

---

---

---

---

---

---

---

### Attitudes:

How did they feel about that experience?

---

---

---

---

---

---

---

### Rules of Thumb

- Based upon their experience & attitudes have they developed a rule of thumb?
- Example: After a couple negative run ins with police they juror now feel that all cops are on a power trip.
  - Is that an attitude you want in the jury room on a resisting arrest case where the Defendant got his ass kicked?

---

---

---

---

---

---

---

### General questioning techniques when using E.A.R.

- Invite openness
- Keep it random
- Loop method
  - Rope other jurors into your conversation
  - “Juror #5, what do you think about what Juror #3 just said?”

---

---

---

---

---

---

---

### What to do with the responses?

- Response is a negative experience/attitude to your case

- Ex: All cops are on power trips
- Good!... This is the juror you are looking for.
  - Spring this attitude to the whole panel.



- Response is positive experience/attitude to your case

- Ex: cops perform with grace under incredible pressures
- SHUT YOUR MOUTH and move on.
  - Do not spring this to the whole panel.

---

---

---

---

---

---

---

---

### Other things to consider that were brought out during voir dire

- Juror experiences that parallel the Defendant's
  - Ex: juror who has a family member with a drug addiction
- Experiences that may give a positive or negative view of your victim
- Experiences that create potential bias
  - Is it a bias that will be immovable?

---

---

---

---

---

---

---

---

### What do you fall back on when you cannot get a good read on a juror?

- The “scariest” juror
- OK to use some of the general rules
  - No teachers, no scientists on DUI's, no-one from Sedona, etc...
- Look for those who don't play well with others
- Its OK to look for idiots
- Observations
  - Have your officer can help you
  - Items the juror has with them (books, symbols on jacket, etc...)
- Use your gut & don't overanalyze

---

---

---

---

---

---

---

---



### Batson Challenges

- *Batson v. Kentucky*, 476 U.S. 79 (1986)
  - Cannot use preemptory strikes for reasons of race, religion, gender, etc....
- This is NOT a right of the Defendant, but a right of the juror to be seated.

---

---

---

---

---

---

---

---

### Batson Challenge Process

- 1) Defendant makes prima facie case
  - Standard is basically meaningless
    - *Johnson v. California*, 545 U.S. 162 (2005)
- 2) Prosecutor presents race neutral reason for the strike
- 3) Court makes decision
  - Court needs to make specific finding that the strike was valid. *Snyder v. Louisiana*, 552 U.S. 472 (2008)
- Important that you keep notes on why a juror was struck and get them in the file

---

---

---

---

---

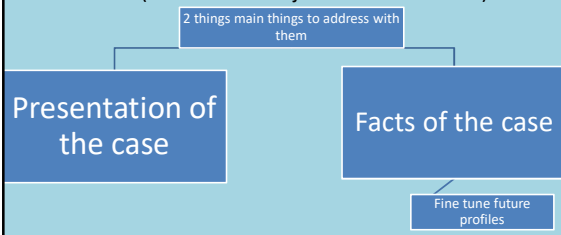
---

---

---

### Post Trial

- No matter what the verdict... talk to the jurors.
  - Remind Court to tell them you *want* to talk to them (... of course subject to their consent).




---

---

---

---

---

---

---

---

Top 10 mistakes in Jury Selection

---

---

---

---

---

---

---

---

10. Interrogation of Jurors

---

---

---

---

---

---

---

---

9. Bonding with Just a Few Jurors

---

---

---

---

---

---

---

---

8. Refusing to Ask the Tough Questions  
about your Case Weaknesses

---

---

---

---

---

---

---

7. Allow Court to Conduct all the Voir  
Dire

---

---

---

---

---

---

---

6. Failure to seek a SJQ where  
appropriate

---

---

---

---

---

---

---

5. Talking Down to Jurors

---

---

---

---

---

---

---

---

4. Failure to keep an Open Mind to  
Juror Responses

---

---

---

---

---

---

---

---

3. Failure to Use Good Social Skills

---

---

---

---

---

---

---

---

2. Waiting till the Last Minute to Draft  
Voir Dire

---

---

---

---

---

---

---

1. Failing to Believe Voir Dire is  
Essential

---

---

---

---

---

---

---

Final Thoughts / Ideas

- Steal
- Don't be a psychiatrist
- Questions or Experiences?
  
- Juror Notebook: Rule 18.6d

---

---

---

---

---

---

---